

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

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IPA TECHNOLOGIES INC., : CIVIL ACTION
:
Plaintiff, :
:
vs. :
:
AMAZON.COM, INC., and :
AMAZON DIGITAL SERVICES, :
LLC, :
:
Defendant. : NO. 16-1266 (RGA)

----- :
IPA TECHNOLOGIES INC., : CIVIL ACTION
:
Plaintiff, :
:
vs. :
:
SONY ELECTRONICS INC., and :
SONY MOBILE COMMUNICATIONS :
(USA) INC., :
:
:
Defendant. : NO. 17-055 (RGA)

- - -

Wilmington, Delaware
Thursday, November 16, 2017
3:11 o'clock, p.m.

- - -

BEFORE: HONORABLE RICHARD G. ANDREWS, U.S.D.C.J.

- - -

Valerie J. Gunning
Official Court Reporter

1 APPEARANCES:

2
3 BAYARD, P.A.
4 BY: STEPHEN B. BRAUERMAN, ESQ.

5 -and-

6 RUSS, AUGUST & KABAT
7 BY: MARC A. FENSTER, ESQ. and
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(Los Angeles, California)

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10 Counsel for Plaintiff

11 ASHBY & GEDDES
12 BY: ANDREW C. MAYO, ESQ.

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15 FENWICK & WEST LLP
16 BY: J. DAVID HADDEN, ESQ. and
17 RAVI RANGANATH, ESQ.
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18 Counsel for Defendants
19 Amazon.com, Inc. and
20 Amazon Digital Services, LLC

21 MORRIS, NICHOLS, ARSHT & TUNNELL LLP
22 BY: RODGER D. SMITH, ESQ.

23 -and-

24

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1 **APPEARANCES (Continued) :**

2
3 **PAUL HASTINGS LLP**
4 **BY: MICHAEL HENDERSHOT, ESQ. and**
5 **DAVID OKANO, ESQ.**
6 **(Palo Alto, California)**

7 **Counsel for Defendants**
8 **Sony Electronics Inc. and**
9 **Sony Mobile Communications (USA) Inc.**

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11 **ALSO PRESENT:**

12 **Ajeet Pai**
13 **Amazon**

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15:03:31
15:03:32

1 P R O C E E D I N G S

14:55:25 2
14:55:45 3 (Proceedings commenced in the courtroom,
14:55:52 4 beginning at 3:11 p.m.)

15:02:15 5
15:02:15 6 THE COURT: All right. Good afternoon,
15:02:16 7 everyone. Please be seated.

15:02:17 8 This is IPA Technologies, Inc. versus
15:02:22 9 Amazon.com, Civil Action No. 16-1266, and IPA Technologies
15:02:27 10 versus Sony, Civil Action No. 17-55.

15:02:34 11 Mr. Brauerman, good afternoon.

15:02:39 12 MR. BRAUERMAN: Good afternoon, Your Honor.
15:02:40 13 Steve Brauerman from Bayard on behalf of the plaintiff, IPA
15:02:45 14 Technologies, Incorporated.

15:02:46 15 I'm joined at counsel table by Marc Fenster and
15:02:50 16 Brian Ledahl of Russ, August & Kabat in Los Angeles, and
15:02:53 17 with your Honor's permission, Mr. Fenster will address the
15:02:57 18 Court today.

15:02:57 19 THE COURT: That will be fine. Mr. Fenster is
15:02:59 20 pretty well-known here. Mr. Smith or Mr. Balick, they're
15:03:03 21 pretty well-known, too.

15:03:04 22 MR. SMITH: Good afternoon, Your Honor.
15:03:05 23 Rodger Smith from Morris Nichols on behalf of the Sony
15:03:05 24 defendants.

15:03:05 25 I am joined by Michael Hendershot from Paul

1 Hastings and his colleague David Okano, also from Paul
2 Hastings.

3 THE COURT: Okay. Thank you.

4 MR. SMITH: Thank you.

5 THE COURT: Thank you. Mr. Balick?

6 MR. BALICK: Hello, your Honor.

7 THE COURT: Good afternoon.

8 MR. BALICK: Good afternoon. Steven Balick from
9 Ashby & Geddes here on behalf of Amazon.

10 I'm joined by co-counsel from Fenwick & West,
11 David Hadden.

12 MR. HADDEN: Good afternoon, Your Honor.

13 MR. BALICK: And Rovi Ranganath. And our client
14 is with us as well today. Ajeet Pai from Amazon is in the
15 back of the courtroom.

16 THE COURT: Okay.

17 MR. BALICK: Thank you.

18 THE COURT: Thank you.

19 And let me think. I recall I think Amazon wrote
20 the first brief and then Sony wrote the second. Do I have
21 the order right?

22 MR. HADDEN: Yes, your Honor.

23 THE COURT: And so in terms of the defendants'
24 side of the equation here, who is arguing what?

25 MR. HADDEN: Sure, your Honor. David Hadden for

Amazon.

We'll go first and focus on step 1 mostly of the Alice test and Mr. Hendershot will follow me.

THE COURT: All right. Does that mean he's going to focus on step 2?

MR. HENDERSHOT: Yes, Your Honor. I'm not going to retread ground covered by Mr. Hadden. I am going to focus primarily on the positions and the specifications that relevant to the question.

THE COURT: Okay. Go ahead, Mr. Hadden.

MR. HADDEN: Thank you, Your Honor.

So as you know, Your Honor, the three patents in this case share common specifications, and all claim priority to the same initial application. All of the patents --

THE COURT: Remind me. That is what date, approximately?

MR. HADDEN: 1999, Your Honor.

THE COURT: Okay.

MR. HADDEN: And all of the patents and the claims in this case are invalid because they claim a result, not a specific function, or not a specific solution to achieve that result.

THE COURT: And is this argument about the hundreds of claims that are in here or are there, as the

1 plaintiff indicated, some claims are asserted and not
2 others?

3 MR. HADDEN: So the plaintiff has identified
4 asserted claims in each of the patents, and basically claim
5 1 from each of the patents. There has been no, nothing in
6 the briefing that has raised additional limitations for
7 dependents claims, as they've been called out. So I think
8 it's effectively undisputed that those claims are
9 represented.

10 Before I go further, I do have some books here
11 that I could hand up.

12 THE COURT: Yes.

13 MR. HADDEN: If you would like them.

14 THE COURT: Yes, please.

15 (Mr. Hadden handed slides to the Court.)

16 MR. HADDEN: The problem with these claims is
17 the same problem that the Federal Circuit found with the
18 claims in Infinity Labs, which is they do no more than
19 describe a function or an outcome without providing any
20 limiting detail to a particular solution to that problem.
21 And that is a vague issue here, because the problem is a
22 huge one. It is sort of one of the holy grails of computer
23 science, which is understanding and responding to spoken
24 natural language. That is something that has been intense
25 study of computer scientists for decades, both in industry

1 and academia, and it has begun to bear fruit in the last
2 several years with very useful consumers products like
3 Amazon's Alexa and Apple's Siri that now allow millions of
4 people to get information and entertainment by asking for
5 it.

6 But there's nothing in these claims that
7 describe a particular way for that to work. There is no new
8 natural language processing technology claimed. There is no
9 new speech recognition technology claimed. All the patents
10 claim is the idea itself that such an interaction would be
11 useful, and that's not enough.

12 As the Federal Circuit told us repeatedly up
13 until two weeks ago in the Two-Way Media case, that as a 101
14 analysis, we have to focus on the claims to see whether
15 they're actually directed to a specific solution or just a
16 result, which is nothing but the idea itself, which is the
17 case here. And the Federal Circuit in Two-Way Media found
18 the same thing that we asked here. Result-based functional
19 claim language, that it does not sufficiently describe how
20 to achieve the results in a non-abstract way.

21 And the Federal Circuit reminded us that the
22 focus has to be on the claims themselves. The claims
23 themselves have to include that required specific technical
24 solution, and the claims here don't. All right.

25 The idea, or the recognition that it would be

1 cool to get information by talking to a computer, or to get
2 the movie you want by asking your remote, all of these
3 patents claim. And there's an example in the patent, this
4 video on demand application.

5 THE COURT: Oh, yes. Clint Eastwood.

6 MR. HADDEN: Right. When the user wants to see
7 a Clint Eastwood movie, he wants to see Unforgiven, but
8 doesn't remember the name, so he asks for movies that are
9 directed and starring Clint Eastwood.

10 And the way the patent explains that it works
11 is, you say, I want to see that movie starring and directed
12 by Clint Eastwood. I don't remember the title. You talk
13 into your remote control, and somehow you get back a list of
14 movies that are starring and directed by Clint Eastwood.
15 Unforgiven, True Crime. It's an old patent. It doesn't
16 have Million Dollar Baby and several others. But there's no
17 description of how these results are obtained. There is no
18 description of how what you've said is understood by the
19 computer system, and there is no description of how an
20 appropriate data source is somehow queried to find the
21 results.

22 The next step in the idea here is that you get
23 back a list of movies, and then you can pick Unforgiven
24 from that list by clicking 1 on your remote control. That
25 is the multimodal input that we heard much about in IPA's

15:09:29 1 brief.

15:09:29 2 But just picking from a list after you have
15:09:32 3 gotten a subset of what you ask for, that is just an
15:09:36 4 abstract idea. That is not technology. There's no
15:09:40 5 description in these claims of any piece that would give you
15:09:44 6 any part of this interaction. The claim is just the idea of
15:09:47 7 the interaction itself.

15:09:49 8 And if we look at the claims, that is clear. So
15:09:54 9 here's claim 1 from the '021 patent, which is one of the
15:09:57 10 asserted claims.

15:09:58 11 The preamble just talked about speech-based
15:10:01 12 navigation using network servers. Clearly, having network
15:10:05 13 servers is nothing innovative or original.

15:10:08 14 The first element is just receiving the request.
15:10:11 15 I want to see a Clint Eastwood movie.

15:10:14 16 In response to that, the next step is rendering
15:10:17 17 an interpretation of the spoken request. And this is where
15:10:20 18 the real land grab is in this case. Right? That is the
15:10:24 19 very hard problem that people have been trying to solve for
15:10:28 20 decades and this claims the result. You render the
15:10:31 21 interpretation. You determine the meaning. There is no
15:10:36 22 explanation here --

15:10:37 23 THE COURT: But I thought that by the time this
15:10:40 24 was written, there were already commercial programs that
15:10:45 25 could render interpretation of the spoken request. This is

1 why there's no further description of this that's probably
2 necessary.

3 MR. HADDEN: Well, there was certainly voice
4 recognition software and there were some programs that would
5 interpret the natural language to words that came out of
6 that. But doing that in a way that is actually useful, like
7 with Amazon's Alexa or Apple's Siri, it was a very hard
8 problem.

9 THE COURT: Well, right, but they're not
10 actually -- the patent is not actually claiming Alexa. It
11 is claiming something else.

12 MR. HADDEN: Well, they have sued Amazon based
13 on Alexa.

14 THE COURT: Well, no. I'm not saying they don't
15 say Alexa reads on it.

16 MR. HADDEN: Sure.

17 THE COURT: But they're not -- and so maybe
18 that's inconsistent. But I mean as I understand it, they're
19 saying the improvement here has nothing to do with, at least
20 the first two steps.

21 MR. HADDEN: I agree completely, Your Honor,
22 that there is nothing in the patent that provides an
23 improvement to the way that a computer would understand
24 spoken language. The problem I have is that they have a
25 claim that says, understands spoken language, and they're

15:12:06 1 trying to apply it to any system that does that without
15:12:10 2 having provided a better or improved way to do it.

15:12:13 3 THE COURT: Well, it seems like the question of
15:12:15 4 whether they do or they don't, that's in the five terms or
15:12:21 5 five limitations that follow; right? And I understand your
15:12:25 6 position is that they don't, but I think that's where you
15:12:29 7 need, where we need to concentrate.

15:12:33 8 Do you agree?

15:12:34 9 MR. HADDEN: Well, I agree in part, Your Honor.
15:12:36 10 I agree that we need to look at the next five terms, but all
15:12:41 11 of those five terms use what is the output of step 1.
15:12:46 12 Right. The meaning of what was spoken. Right.

15:12:49 13 So they're not saying there's any better way
15:12:51 14 here of understanding what was said. You just understand
15:12:54 15 what was said. Right. And then you do some other things,
15:12:58 16 like provide the list of movies, and we can walk through
15:13:01 17 those.

15:13:01 18 So in essence, every one of these claims is a
15:13:06 19 subset of every way to determine what was said, and that is
15:13:10 20 a huge grab where there's no technology for doing that
15:13:14 21 that's described or claimed.

15:13:17 22 So if we look and see what actually else happens
15:13:21 23 here, right, the next step is just constructing this
15:13:24 24 navigation query based on the interpretation. So that's
15:13:28 25 just somehow creating a query that is going to get me

1 Unforgiven, Absolute Power, I forgot what the third Clint
2 Eastwood movie is, but whatever it is that I asked for in my
3 original question. All right. And there's no description
4 here of how you construct that query, how you take the
5 meaning of what was said and turn it into some sort of query
6 or some sort of data search.

7 And then the next step is the listing of the
8 three options. Right. It's the listing additional input
9 from the user. But there's no description here of
10 determining when additional input would be required. Right.
11 There's no way of determining in this claim what initial
12 spoken request was ambiguous or needed clarification.
13 There's no description of doing that or how you would do
14 that here. All this says is you provide some options that
15 someone can respond to with no way of figuring out what
16 those options would be or why you would need them.

17 And then the next step is just using whatever
18 additional information you got from the user to somehow come
19 up with a query that is more tailored to what they want, but
20 there's no way, there's no description of how you would do
21 that.

22 And, finally, there's just using this query that
23 you get at the end of the day and get whatever it is the
24 user wants from any electronic data source, and you transmit
25 it back to them.

1 So at the end, all this claim does is describe
2 the steps we saw in the Clint Eastwood example, with no
3 description of any technology for actually making any of
4 that transaction work. It's just the idea of the
5 transaction itself.

6 And if we look at the proposed claim
7 constructions that IPA provided in response to Your Honor's
8 request, it's clear that they don't provide any more of a
9 concrete solution to the claim. All right.

10 THE COURT: Well, I didn't think they really
11 caused much narrowing or something else that -- you know,
12 sometimes you do this to see whether there's some sort of
13 generic term that the claim construction is more specific,
14 so I didn't think the claim construction, at least it wasn't
15 obvious to me that it made any difference.

16 MR. HADDEN: I think, in fact, Your Honor, the
17 claim construction designated is more result and function
18 oriented than the claim itself. All right.

19 So electronic data source is basically any sorts
20 of digital information. Rendering an interpretation of the
21 spoken request is again any means existing or in the future
22 for determining the meaning of a spoken request using a
23 computer. That's the big hard problem that people are
24 working hard to do better and better every day.

25 And then navigation query is basically anything

1 that is appropriate to search the desired information. I
2 mean, that is just the final result. Right? Whatever
3 information to get you the information you want is a
4 navigation query under the construction.

5 So I think, if anything, the constructions just
6 show that this is a purely result oriented functional claim
7 that basically covers any interactions with a computer that
8 will get you the information you want with some step in
9 between where you clarify in some undetermined manner.

10 Now, if we look at, you know, where is the real
11 required specific technical solution, well, IPA has pointed
12 us to one in their brief. They say, the asserted claims are
13 directed to technological solutions specific to navigating
14 electronic data sources. But we just saw, their
15 construction of electronic data sources is any sort of
16 digital information. That is not a specific field to start
17 with. And what's required is not applying the abstract idea
18 to some specific field of use. What is required is a
19 specific technical solution that would get you the result,
20 and that's not here.

21 They talk about the use of structured navigation
22 queries, but, again, their own construction of that is
23 anything that will get you the information you want from any
24 electronic source. That is not a technical solution.
25 That's a result. A black box.

1 They talk about quickly and efficiently
2 navigating increasingly large and complex electronic
3 databases, but there's nothing in that claim that we saw
4 that does anything to help you navigate a large complex
5 database. Right. Sure, asking for something and getting it
6 back out of a complex database would be a great thing, but
7 there's no solution in that claim for doing it.

8 And, finally, they talk about resolving errors
9 and ambiguities and it's the same issue. Yes, it's great to
10 have a system that resolves the errors and ambiguities, but
11 there's nothing in the claim that even identifies an
12 ambiguity or provides a way to resolve it. Right. All they
13 say is, the user can provide more information, but that
14 doesn't tell you how to do anything.

15 At the end of the day, the claim as basically
16 illustrated in the specification is a series of black boxes
17 and they're all in it. Right. You have some speech
18 recognition. You have some natural language parser, and
19 then you have a way to construct queries and refine them.
20 But these boxes are completely empty in the claim. There
21 is no technology for doing any of these. They're just
22 results.

23 Now, they tried to, you know, wrap themselves in
24 Enfish and some of the other Federal Circuit cases that have
25 held claims, but those claims had a specific solution.

1 Right. Enfish you have the self-referential database and
2 the four-step limit. Bascom, you had a new approach to
3 using the IP address to custom filter Internet content in an
4 ISP.

5 There's nothing comparable to those solutions
6 in these claims. It is just, ask for what you want from a
7 computer, provide some followup, and get it.

8 And there's a lot of, you know, claiming that
9 somehow this is the technology that enabled Siri and the
10 timeline couldn't be clearer that that is nonsense. This
11 patent was filed in 1999.

12 The folks who invented Siri as well as hundreds
13 of artificial intelligence researchers who worked on the
14 CALO project --

15 THE COURT: What you are talking about now,
16 which, you know, I did see some back and forth in the brief,
17 given the procedural posture of this case, it may be
18 well-known to you all, some of this stuff, but it's not
19 well-known to me.

20 Shouldn't I just ignore this part in terms of
21 what I have to do here?

22 MR. HADDEN: I don't think you have to, Your
23 Honor, in fact, because it's in their pleading. They plead
24 the release dates of Siri. We know the filing date. If you
25 want to skip the CALO in between, they acknowledge those

1 dates are correct in their opposition to Sony's brief.

2 There's no real dispute.

3 But I think the point is clear that the problem
4 with this patent and patents like it is, they're trying to
5 claim the decade of innovation that led to the actual
6 product. Right. And there's a corresponding decade of
7 innovation by Amazon that led to Alexa and Google that led
8 to Google Voice. And you can't jump to the finish line and
9 grab the results of that innovation and real invention based
10 on this empty patent from '99.

11 THE COURT: So what you are just saying now, if
12 the case goes forward, is that some combination of a written
13 description or enablement defense?

14 MR. HADDEN: Well, I think there is definitely
15 both a written description and enablement issue, but the
16 issue I'm going at more is the preemption issue. Right.
17 That underlying rationale or one of them under 101 is that
18 you don't get a claim that you solved a problem and then
19 claim everybody else's future solutions. All right. I
20 mean, it's like Judge Bryson said in Affinity Labs. Right.
21 You can't just write down a problem, check I solved it, and
22 then preempt all the development that goes into real
23 solution, which is what they're doing here. Right.

24 We saw the claim. There's no claim that a
25 specific way to do anything exists. People spend decades

1 and hundreds of millions of dollars developing ways that
2 actually work well, and these folks are trying to claim
3 them.

4 THE COURT: And I'm sorry. The case you were
5 citing with Judge Bryson --

6 MR. HADDEN: Affinity Labs versus Amazon, Your
7 Honor.

8 THE COURT: Was that a District Court or --

9 MR. HADDEN: He said essentially the same thing
10 in a prior District Court opinion, but that is a Federal
11 Circuit opinion, Your Honor.

12 THE COURT: Okay. All right.

13 MR. HADDEN: And that's the problem with these
14 types of patents, and I think that's the clearest kind of
15 101 issue, which is that the difference between claiming a
16 technical solution, which you have a right to, and just
17 claiming a problem and the notion that you could solve it,
18 which is all we have here.

19 They tried to distinguish cases like Affinity
20 Labs versus Amazon and there's just no way to do it. So
21 this is the representative claim from that case. It is like
22 the claim here in that it is aspirational. Right. It is
23 basically claiming the idea that it would be cool to
24 download music or video to my wireless device without
25 providing any real technology for doing it. But it

1 certainly provides the level of kind of description that's
2 in the claims here or more. It talks about streaming video
3 using some network based resources and a list of network
4 locations. That is more specific than the claims here,
5 which talk about getting any type of information from any
6 digital source in any manner.

7 THE COURT: Was Affinity Labs -- I have to say
8 notwithstanding the fact that I try to read these cases, not
9 one that I can draw any picture of. Was that a motion to
10 dismiss or a summary judgment?

11 MR. HADDEN: It was a motion to dismiss. I
12 actually argued this one. It was a motion to dismiss, Your
13 Honor.

14 THE COURT: Okay. Right. All right.

15 MR. HADDEN: And the other case that I think is
16 just, there's not a universe where the Electric Power Group
17 claim is invalid and this claim is valid. Right.

18 Electric Power Group, the claim has a lot of
19 detail in describing what data is received, specific time
20 limits on it, how it is analyzed, how it is compiled and
21 accumulated, and how it is used to develop these indicators
22 of reliability. If this claim is fatally abstract, I don't
23 see how the claims in these IPA patents could possibly
24 survive.

25 One last point, Your Honor. In a footnote in

1 IPA's opposition, they point to the word "agents" in some of
2 the claims of the '061 patent as being relevant. I think
3 tellingly, Your Honor, IPA did not provide a construction
4 for agent, and did not include it on the list of terms that
5 were somehow relevant to this motion, so I don't think it
6 is.

7 If you look at how it's actually used in the
8 claim, it's just another name for the black box that
9 performs some of these functions, like utilizing the
10 navigation query to select electronic data. It doesn't tell
11 you anything about what the agent does to make that happen.
12 And, in fact, in the patent that is incorporated by
13 reference, it talks about agent, there's no dispute that
14 there's not something that IPA invented. Right. It talks
15 about agent as being a known prior art way of creating
16 distributed software. It's like object oriented programming
17 on steroids.

18 THE COURT: All right. You're using words that
19 don't necessarily mean anything to me.

20 MR. HADDEN: Sorry, Your Honor.

21 THE COURT: Can you --

22 MR. HADDEN: Yes.

23 THE COURT: -- explain this --

24 MR. HADDEN: My only point, Your Honor -- my
25 only point.

1 If we go back to the claim, sorry, they have
2 some claims that talk about agents during X, Y and Z. They
3 don't tell you anything about how the agents do it, so all
4 this is is just another name for some black box that
5 performs this function and achieves whatever this result is.
6 Querying the data source, for example.

7 THE COURT: And just on a basic level, you
8 think agents, you would interpret it as being things, not
9 people?

10 MR. HADDEN: Right. So there is a kind of
11 software development paradigm in which things called agents
12 are used. They are basically little programs that can
13 coordinate with each other to perform tasks.

14 THE COURT: All right.

15 MR. HADDEN: But the basic idea of agents is not
16 an invention, and they acknowledge it's not.

17 THE COURT: And so in a different context not
18 too long ago, people were talking about macro. Is that the
19 same idea?

20 MR. HADDEN: Not exactly, but an agent is kind
21 of like -- it is, the patent actually describes it as a
22 wrapper around an application, so you have some program that
23 does something, and then you want it to be able to work with
24 another program that does something else to try to solve
25 basically a bigger problem. To do that, you can provide

1 some additional capabilities that would allow those two
2 different programs to exchange information. In that sense,
3 they kind of become agents.

4 But it was kind of faddish, it's kind of gone
5 now, but for a while was a well-known programming
6 methodology, a derivative of object oriented programming,
7 which is kind of another standard programming methodology
8 for building big applications. But just, my point is just
9 invoking the word "agent" does not tell you anything about
10 how it works and it's not a new idea.

11 THE COURT: Okay.

12 MR. HADDEN: If you have no more questions for
13 me, I will turn it over to my colleague for Sony, Your
14 Honor.

15 THE COURT: All right. That will be good.

16 MR. HADDEN: Thank you.

17 MR. HENDERSHOT: May it please the Court,
18 Michael Hendershot of Paul Hastings on behalf of the Sony
19 defendants.

20 I have some slides as well. If I can approach?

21 THE COURT: Okay.

22 (Mr. Hendershot handed slides to the Court.)

23 MR. HENDERSHOT: This one is a shorter one.

24 THE COURT: Good enough.

25 MR. HENDERSHOT: So if I could just pick up on a

1 few items Your Honor was discussing with co-counsel.

2 Specifically with regard to agent, if you could pull up
3 slide 16, or slide 11, please.

4 There was some discussion about what software
5 agents were and it is generally accurate. The specification
6 talks about them by reference to establish technology and
7 what was commonly known at the time.

8 I think what you primarily need to know about
9 agents in connection with this motion are two things. One,
10 they didn't offer construction of them suggesting that they
11 would be anything other than a direct software concept.
12 And, two, in their opposition, IPA's opposition to Sony's
13 notion, they noted that Sony said certain claim elements
14 such as agents and facilitators, which are also in the '061
15 claims, were known or conventional.

16 And then IP explains, the patents do not claim
17 that these elements are inventive, nor do they claim to
18 improve upon the OAA, which I may touch upon, which was a
19 software application that was known and available that used
20 both agents and facilitators.

21 So there's no argument I'm hearing from the
22 other side that those are transformative or inventive.

23 With respect to Your Honor's question about
24 Siri, and there's discussion about subsequent development.
25 From the date of the application for these patents, there

1 absolutely was a decade, probably coming up on two decades
2 now of R&D and research and innovation to develop a robust
3 commercial product that a consumer can use reliably, dual
4 voice assistant, Siri, Alexa, the things some of us use
5 today, but at the level these functions are claimed,
6 transmitting of information, interpreting. In 1999, those
7 ideas were established. Those were conventional. It was a
8 robust field of art that the specification itself points to
9 about what was known.

10 So the idea, the idea of performing the
11 functions at the level they're recited in these claims may
12 have taken additional time to develop a really successful
13 commercial product, but at the level they're claimed was
14 absolutely known and established conventional at the time of
15 the invention.

16 And Your Honor raised a question about
17 representative claims. I can touch on that briefly. Both
18 Amazon and Sony identified what they believed were
19 representative claims in their motion. They matched up to
20 the claims identified in the complaints and opposition. I
21 don't think representativeness was contested.

22 There are a number of claims in one of the
23 patents, but I don't think really could argue that they're
24 not fairly represented by the claims we've briefed.

25 THE COURT: And which do you -- wait a second.

1 Yes, okay. Never mind.

2 MR. HENDERSHOT: Just a few examples. The '021
3 patent has six sets of independent claims, substantially
4 identical dependent claims. So there are a series of
5 repeating claims. There are six dedicated to using a
6 database language. There are six dedicated to processing
7 locally. Six dedicated to processing remotely. 16, to
8 display items on a menu when selecting them. I don't think
9 there's a fair argument that the claims we've identified
10 aren't representative and I don't think they've raised one
11 in their briefing.

12 So I don't want to retread ground that
13 co-counsel covered -- slide 2, please. I want to touch, I
14 think the claims control. That's clear from the Federal
15 Circuit.

16 I think it's clear if you look at the claims in
17 these patents, they fall right in line with Electric Power
18 Group, TLI, the Affinity case and the Two-Way Media case,
19 and that they claim desired results without any way of
20 achieving those.

21 The specification I think confirms that and
22 gives some reason as to why they're probably claiming them
23 at such a high functional level. This is a sentence on the
24 slide here from IPA's opposition. It says, The patents
25 address these needs by providing essentially navigating

1 network based electronic data sources in response to spoken
2 input requests, and the needs that were identified ahead of
3 that included finding, developing a voice driven front end
4 to existing data back ends.

5 Now, that stuck out to me -- go to the next
6 slide. Because the specification I believe Your Honor was
7 alluding to earlier provides on the voice front end side,
8 there were readily available commercial quality speech
9 recognition engines. They don't claim to have improved that
10 or modified those.

11 With respect to the back end, the patent is very
12 clear that practitioners of ordinary skill in the art would
13 have been thoroughly familiar with the notion of database
14 navigation through structured query, which is the concept of
15 constructing the database navigation theory that turns up in
16 the claim.

17 So on the front end, there's commercially
18 available stuff, and on the back end, persons of skill in
19 the art would be thoroughly familiar with the technology.
20 And those two concepts in several admissions bear out
21 through all the claims.

22 If we go to the next slide, please.

23 So this is the '718 patent, a method very
24 similar to the '021 claim that counsel talked about.

25 There is a wherein clause in element A that says

1 the appliance is a formal remote control device or a set top
2 box for a television.

3 The specification doesn't offer any particular
4 solution or identify any problem that arises from that
5 context. That's just a limitation to a technical field,
6 which Alice in subsequent cases has made clear isn't
7 sufficient to take an abstract idea and transport it to
8 something patent eligible.

9 If you look at slide 5, it's a passage from the
10 specification. It just identifies a set top box, and this
11 television environment as one of any number of different
12 hardware and software computing platforms on which you could
13 implement the invention. It says you can do it on this
14 platform. It doesn't offer any particular technical
15 solution or identify any particular technical problems
16 arising in that space.

17 We've cited in Sony's briefing cases that have
18 held a set top box and a remote control aren't sufficient to
19 transform similar claims into patent eligible subject
20 matter, and we think the '718 is no different.

21 Go to the next slide.

22 This is the '021 patent, claim 1, which was
23 discussed. This is similar to the '718 we just spoke about,
24 except it adds this non-spoken modality and multi-modality
25 input. I will admit when I read that, it struck me as

1 pretty fancy language. And I thought, there might be
2 something there multi-modality, non-spoken input.

3 Any time you're interacting with a computer, you
4 are engaging in multi-modality input. If you use a keyboard
5 and a mouse, those are two forms of -- two modalities of
6 input in the terms of the patent.

7 If you ever had to try to make a reservation on
8 I think United way back in the day, where you get a voice
9 menu and you would speak or hit a number, that's multi-modal
10 input. Multi-modal input is the most common way to interact
11 with an electronic device. It's frankly so ubiquitous, I
12 had taken it for granted when I first read the language.

13 If you look at the specification on the next
14 slide, I think it makes really clear that this multi-modal
15 input is not transformative, it's not inventive. The
16 non-spoken input the patent contemplates is either a menu
17 selection or simply pressing an okay button in response
18 to a return of, results from a spoken search. That is among
19 the most conventional ways to interact with the device, and
20 the idea that including that in connection with a spoken
21 input device renders it unconventional I think is just
22 contrary to the specification and some additional admissions
23 it makes.

24 The next slide, please.

25 So the specification acknowledges there was a

15:38:12 1 prior art open agent architecture system, or OAA. That
15:38:17 2 was a known system that was subject to a number of
15:38:19 3 publications well before the earliest priority date for
15:38:21 4 these patents.

15:38:23 5 The patent acknowledges that the OAA was known
15:38:26 6 to provide a useful software platform for building systems
15:38:26 7 that integrate the spoken natural language as well as other
15:38:26 8 user modalities.

15:38:35 9 So the specification is acknowledging that this
15:38:37 10 prior art system that's covered in a number of publications
15:38:40 11 and was known was useful for using multiple modalities.

15:38:45 12 And then in IPA's opposition, which is the
15:38:50 13 second quote, they acknowledge the patents do not claim that
15:38:54 14 these elements are inventive, the elements from the list
15:38:56 15 earlier, nor do the patents claim to invent or improve upon
15:39:03 16 the OAA. You have an existing conventional software
15:39:04 17 platform that enables you to use natural language and other
15:39:05 18 modes of input, and their brief acknowledges they don't
15:39:08 19 claim to have invented it or improved upon it in here.
15:39:11 20 Again, they are making use of conventional and established
15:39:13 21 technology to implement these high level functions.

15:39:16 22 Go to the next slide.

15:39:17 23 The '061 patent. It is similar to the '718 and
15:39:24 24 '021 except it doesn't have the multimodal input, it doesn't
15:39:27 25 have the television set top box or remote control. It has

1 what we've talked about with agents and facilitators.

2 Can we go to the next slide.

3 The specification acknowledges in the first
4 quote there that this OAA system, which was publicly known,
5 covered a number of publications, included the agents, the
6 facilitators, everything that was claimed there for those
7 terms we talked about a moment ago.

8 The specification acknowledges OAA was known as
9 a useful software platform for natural software
10 applications, and it points out a number of prior examples,
11 including the Info Whiz, a unified messaging system and a
12 CommandTalk application. And this CommandTalk application
13 combine natural language input, non-spoken modalities,
14 agents and facilitators, all in a system where you could
15 respond to a spoken input. That was from well before the
16 priority date for these patents that was incorporated into
17 the specification, and it's attached as Exhibit A to our
18 motion.

19 That CommandTalk system demonstrates this order
20 combination and each of these elements they're talking about
21 and trying to claim at a functional level were known,
22 established and conventional.

23 Go to the next slide.

24 And we touched on this earlier. With respect to
25 agents and facilitators, their brief acknowledged they don't

1 contend that they are inventive.

2 I agree with what counsel said about the claim
3 constructions and understand Your Honor's view of them. I
4 agree with it. I don't think they added much to render
5 them anything other than claiming a function or desired
6 result.

7 On slide 12, 13 and 14, we've included passages
8 from the specification that confirm these are things that
9 were known and conventional at the time.

10 The navigation query, they talk about it being
11 appropriately structured. Well, the specification says that
12 means whatever content or structure you need, include.
13 That's not specific. That doesn't limit it to any
14 technological implementation.

15 With respect to navigation queries, it talks
16 about using SQL or a relationship database, and the patent
17 acknowledges that SQL was both an ANSI and an ISO standard,
18 so it is one of those conventional technologies.

19 Go to the next slide.

20 Electronic data source could basically be
21 anything, a database, a website.

22 Go to the next slide. And rendering an
23 interpretation of the spoken request. Again, the patent
24 acknowledges, there are a variety of commercial quality
25 speech recognition products on the product market, including

1 a low-cost shrink-wrapped version. And it says, basically a
2 speech recognition engine processes acoustic voice data and
3 attempts to generate a text stream of recognized words.

4 That basically maps to the second half of their
5 construction. The patent again acknowledges those were
6 commercially available and conventional.

7 Next slide.

8 And if you look at their arguments about their
9 constructions, they appear to be arguing that really their
10 invention that they're arguing about or contending they came
11 up with is coming up with a voice input for a computer and
12 that combination at that high of a level.

13 They point to their constructions and argue,
14 look, we tie it to digital data. We tie it to electronic
15 data. The first quote says, the improvements are specific
16 to navigating electronic data sources rather than the
17 abstract idea of using speech to obtain any kind of
18 information.

19 The next quote they emphasize, the emphasis of
20 the original, that you're doing electronic data.

21 And the next one says data is numerical, which
22 means it's digital.

23 And the last one, they emphasize that electronic
24 is unpacked. They emphasize the patent is a computing
25 device. Additional data, electronic communications and

1 computing device are all as generic computing technology
2 you can find. This is Alice. This is taking an abstract
3 idea at a functional level and saying, do it on a computer.

4 Lastly, I want to touch on Bascom a bit because
5 I do think they argue that. Their position on step 2
6 evolved through their briefing. They initially said there
7 were questions of fact as to whether individual elements
8 were known or conventional. Sony submitted its brief
9 mapping each claim element to admissions in the
10 specification establishing that they were both known and
11 conventional.

12 They came back in response to Sony's brief and
13 said, some of the quotes you see earlier, well, even if
14 their individual elements are known and conventional, it's
15 really the combination. We're like Bascom. We have an
16 combination of conventional elements.

17 If you pull up the '718, claim 1. The order in
18 which they are claiming these functions is as conventional
19 as you can get. There's really not another way to process a
20 spoken request outside of this ordered combination here.
21 You receive an input. You interpret it. You search for
22 information based on the interpretation and you return the
23 information that was found based on that search. There is
24 not another way to sequence that and have a functioning
25 process. So that's the most conventional ordering you could

1 have.

2 And if you look at the CommandTalk application
3 and a discussion of the publications generally in the
4 specification establish that these combinations of language
5 processing, multimodal input, agents and facilitators had
6 already been established as combinations in a number of
7 prior publications and were known in the field. And the
8 CommandTalk application in particular, again, that's Exhibit
9 A to Sony's brief, synthesized and details all of that, so
10 their combinations that they're trying to claim here at a
11 very functional level was established and understood and
12 among the most conventional ordered combinations you could
13 come up with.

14 I'm happy to answer any questions the Court has.

15 THE COURT: No. I will hear from the other
16 side.

17 MR. FENSTER: Your Honor, may I hand up a couple
18 copies?

19 THE COURT: Sure.

20 MR. FENSTER: Is three sufficient?

21 THE COURT: Sure. Yes.

22 (Mr. Fenster handed slides to the Court.)

23 THE COURT: So, Mr. Fenster, before you get
24 going, just sort of on the preliminary, in terms of claims
25 being asserted or representative claims, could you just

1 address what your view on that is?

2 MR. FENSTER: Yes, Your Honor. The claim 1 of
3 each of the asserted patents in our view is not
4 representative of all of the claims. There are some claims
5 that are representative of each other. We have not yet
6 identified infringement contentions in those claims that are
7 asserted here. I will run through for you in my
8 presentation those claims that I believe are representative.
9 There are a number of them.

10 Claim 1 is not representative of all and I will
11 go through and explain why.

12 THE COURT: Okay. Good.

13 MR. FENSTER: Okay. First, big picture. Your
14 Honor, 101 has gotten hard. It is not meant to be a proxy
15 for all of the conditions of validity. It is not a proxy
16 for obviousness. It is not a proxy for novelty, and it is
17 not a proxy for enablement or written description. It is
18 very narrow and specific to identify those patents that are
19 directed to in step 1 a fundamental truth, mathematical
20 algorithm or abstract idea.

21 The inquiry of step 1 is what the claims are
22 directed to. Is their focus only the abstract idea, or is
23 it something more?

24 So let's go to slide 5. These are the
25 ineligible ideas that can't be claimed: Mathematical

1 algorithm, hedging, long economic practices, or like
2 intermediating dated settlement or abstract ideas.

3 Is the claim focused on, directed to that? And,
4 Your Honor, the defendants respectfully have not gone
5 through the proper analysis.

6 So slide 6. The step 1 is, what is the claim
7 directed to? In Visual Memory, there are two decisions that
8 have come out since the briefing that I want to direct your
9 attention to. One is Visual Memory, which reversed Your
10 Honor's decision finding ineligible and you can contrast
11 that with Two-Way Media, which affirmed. Drawing a
12 distinction between looking carefully at those two opinions
13 I think should inform your analysis here.

14 In Visual Memory the Court said, the first step
15 requires Courts to determine whether the claims at issue are
16 directed to, are they directed to, focused on one of the
17 ineligible requirements? In DDR Holdings, the question is,
18 is the claimed solution necessarily rooted in computer
19 technology in order to overcome a problem specifically
20 arising in the realm of computer networks? If it is
21 addressed to a problem specific to computer networks or
22 computer technology, it is not abstract.

23 The question for Your Honor is: Are these
24 claims aimed at a solution to a problem specifically arising
25 in the realm of computer technology or are they aimed at

1 what defendants say is the abstract idea, which you didn't
2 hear once today, responding to the spoken word.

3 Next slide, please. Slide 7.

4 The Federal Circuit is clear that in order for
5 you to determine the claims to be invalid, you have to
6 identify, defendants have the burden of identifying the
7 abstract idea that the claims, all of them, are directed to,
8 focused on. It's not enough that they underlie or that they
9 may relate to or involve, but they have to be focused on,
10 directed to the idea itself.

11 In their briefing, defendants identified that
12 idea as responding to spoken requests. That is the burden
13 that they have to show you, which you didn't hear anything
14 about today, which is that these claims are not aimed at a
15 solution to a problem specific to the realm of computers or
16 technology, but rather to the idea of responding to spoken
17 requests written large, and if so, the claims would preempt
18 those, and they don't, as I will show you. Instead, Your
19 Honor, I submit to you that these claims are aimed at
20 improved technology as individual memory, improved
21 technology for speech-based navigation of network-based
22 electronic data sources, and to multimodal methods for
23 resolving errors and ambiguities in doing so. This is
24 specific to searching electronic databases. Responding to
25 the spoken word has nothing to do outside of searching

15:52:08 1 electronic databases.

15:52:10 2 THE COURT: Well, so if in 1999 I had gone into
15:52:16 3 a Blockbuster store, assuming they were still around at the
15:52:20 4 time, and asked for a Clint Eastwood movie, and they had
15:52:27 5 said, well, geez, there's more than one, do you want this
15:52:32 6 one, do you want that one, maybe I come in. I'm speaking
15:52:36 7 with an accent, so I say Clint Eastwood movie, and they
15:52:40 8 think I'm talking about some other director's movie. They
15:52:44 9 ask some questions. But eventually -- and maybe I speak so
15:52:52 10 badly they say, well, can you write it down, because I can
15:52:59 11 actually write English, though I can't speak it very well.
15:53:02 12 Is not the same problem here?

15:53:04 13 MR. FENSTER: It's not, Your Honor. Slide 10,
15:53:07 14 please.

15:53:07 15 So the question is what the claims are directed
15:53:11 16 to, and it was long known that you can -- computers can
15:53:19 17 interpret, meaning they can take the acoustic signal of a
15:53:24 18 spoken word and translate that into text. Okay. That was
15:53:28 19 known. It was similarly known how to search electronic
15:53:33 20 databases using structured query. Defendants pointed that
15:53:36 21 out in the specification. Okay. That was also known.

15:53:40 22 The problem that was specific to this realm is:
15:53:47 23 How do you use a natural language query to query a
15:53:52 24 structured database that requires a structured query?
15:53:57 25 How do you bridge the gap between asking, is it raining in

1 New York today and querying an electronic data source that
2 requires only structured queries? That is exactly the
3 technology that is claimed here, and the solution is a
4 specific one.

5 It is, first, take the -- so let's focus on
6 claim 1. One is a method of speech based navigation of an
7 electronic data source. That is the problem. It is
8 specific to searching electronic data sources distributed
9 over a network located remotely from a user. That's in the
10 claim language itself.

11 You receive the spoken request. You render an
12 interpretation. Rendering an interpretation is done with
13 conventional technology. It is translating into text and
14 then parsing to determine in text. Okay.

15 There are two different technologies that the
16 specification describes as performing that, rendering the
17 interpretation. One is the natural language interpreter and
18 the second is the parser, to interpret the result, to
19 interpret the intent. Okay.

20 Now, those were known. What was not known is
21 how do you then get to a structured query for a structured
22 database? And the innovation here then comes into
23 constructing the navigational query. And, Your Honor, the
24 claim construction is important because the navigational
25 query here is a structured navigational query. It is a

1 structured query specific to the type of data source being
2 searched. It's not -- so the specification describes the
3 limitations of the prior art.

4 They said that prior voice driven systems were
5 not sufficient because they required you to know the
6 specific syntax of the language. What they didn't allow you
7 to do was translate from receiving the spoken word into the
8 structured query. You had to use the exact formulation or
9 it didn't work. And that is what is -- that's the solution
10 is what is claimed, described in these patents and claimed
11 in these claims, and that is a technical solution, an
12 improved technology. It's an improved interface for
13 searching electronic sources.

14 THE COURT: Well, so you are saying the
15 technical solution. Can you just tell me what the claims
16 say that technical solution is?

17 MR. FENSTER: Yes. The technical solution is
18 claimed here in claim 1, and it is the combination of the
19 following steps. Okay. It is taking the spoken request,
20 translating it into text, parsing it to determine intent,
21 selecting the appropriate data source, determining a
22 structured query, and then constructing the structured query
23 for that data source out of the text, then soliciting
24 additional information using a different mode of input
25 without requiring the user to request non-spoken modality.

1 Okay.

2 So this is happening. One, it's an iterative
3 process. You take the written, the spoken request, you
4 translate it, interpret it, select your database, construct
5 a query. Then you have to solicit additional information to
6 refine the query based on information from a different
7 modality without the user saying, no. Show it to me as
8 opposed to ask. And that was specifically referenced in the
9 file history, getting to, is this preemptive? This was
10 specifically referenced in the file history and discussed in
11 the file history to distinguish the prior art systems that
12 had voice driven systems, and I will show you that.

13 Refining the navigation query based on that
14 system, on the additional information. This is a specific
15 iterative process, and what the innovation that they came up
16 with was figuring out that what we have to do is determine
17 the intent, to select the database, figure out the
18 structured query for that, and then construct a structured
19 query to search the electronic database, then refine it with
20 additional information.

21 That is different than the prior art. It
22 overcame the problems that are described in Sections 1 and 2
23 of the '021 patent specification, and they are specifically
24 addressed in the file history.

25 Your Honor, I have to apologize. We actually

1 cite -- we quoted from the file histories which are attached
2 to Exhibits 1 to 3 to my declaration, but we didn't cite to
3 them. I apologize if that caused you problems.

4 THE COURT: No, it didn't cause me any problems
5 yet.

6 MR. FENSTER: Okay. So this is Exhibit 1. This
7 is for the '021 patent, and the '021 patent specifically,
8 there were two pieces of prior art that were cited. One was
9 Levin. Levin teaches a method of using at least one natural
10 language query to retrieve information from one or more data
11 resources and further performing a requested action using
12 the retrieved information. Okay. That was cited as a 102
13 or 103, 103 reference.

14 THE COURT: Okay.

15 MR. FENSTER: Okay. That was combined with a
16 reference called French. And, Your Honor, this is at
17 Exhibit 1 to my declaration at page 24. The last one was at
18 page 23.

19 French teaches a management of speech and audio
20 prompts and interface in multimodal user interfaces. And
21 the examiner combined French with Levin to come up with an
22 obviousness rejection. There was no 102 rejection that was
23 cited, the specific combination of elements described in
24 claim 1 of the '021 patent.

25 One of the bases for distinguishing was that

1 the requirement that without -- without requiring the user
2 to request the non-spoken modality. They relied on this
3 and the combination of elements to distinguish Levin and
4 French. The examiner agreed, this claimed invention was
5 different than French and Levin, which were both
6 voice-driven systems. Okay. The point is that these are
7 not claiming response to spoken word or preempting that
8 field. It was specifically distinguishing prior art that
9 claimed and described natural language queries.

10 In Exhibit 2 we have the '061 patent, and the
11 '061 patent distinguished a reference called Perrone. This
12 is Exhibit 2, and this is Exhibit 2 at page 3. Perrone
13 teaches a method for controlling a server using a voice.
14 This is in the '061 patent. This is the one that has agents
15 and facilitators, which counsel described as merely
16 conventional, but that is what was used to distinguish the
17 Perrone reference.

18 And I will take you through the '061 and why the
19 agents, although agents were known, it's a specific
20 architecture that is claimed in the '061 that distinguished
21 Perrone and the other prior art and doesn't preempt the
22 field. It is a specific type of architecture that has the
23 facilitator with agents registering to it, which is a
24 specific way to do it, and there are other ways to do it
25 that are not claimed and not covered by the '061 patent.

1 The claim, Exhibit 3, Your Honor, goes through
2 and is the file history for the '718 patent and further
3 distinguishes the Levin reference that we saw earlier.

4 If the problem is specifically rooted in
5 technology, it is not an abstract idea. This problem is
6 specific to searching electronic databases. This is not how
7 do you find the movie at Blockbuster. This is how do you
8 query a remote electronic database using a voice-driven
9 front end? It is specific to the technology, specific to
10 computer technology. It only arises in that context, and
11 because of that, the inquiry failed at step 1. They failed
12 to meet their burden at step 1.

13 Okay. So we went through claim 21. Claim 1 of
14 the '021 is representative of the independent claim 1 and
15 the corresponding claims, independent claims of the '021 and
16 the '718 that have the computer program method and system
17 claims. There are three sets of claims that correspond.
18 Claim 1 is representative of that, and it claims the
19 specific combination of elements. None of these elements
20 are new, but as in Visual Media, that doesn't matter, and
21 the reason is because we're not claiming a new -- a natural
22 language parsing system. What we're claiming is a better
23 improved technology for searching an electronic data source
24 with a voice front end that has this combination of
25 elements, converting text into a structured query after you

1 determine what data source to use, and then further refining
2 in an iterative way using different modes without having to
3 ask the user to invoke those different modes.

4 Next slide.

5 So these are claim 3 and 4, dependent claims
6 3 and 4. Counsel said that constructing a query doesn't
7 mean anything because there is no teaching about how that's
8 done.

9 First, that's not true. The specification
10 specifically describes how you do that, and that is shown in
11 Figure 5, for example, of the '021 patent. That specific
12 method is claimed specifically in claims 3 and 4.

13 So this is where constructing the navigation
14 query further includes the steps of extracting an input
15 template for an online scripted interface to the data source
16 and using the input template to construct the navigation
17 query.

18 Claim 3 is a very specific way of accomplishing
19 the constructing the query. It is not preemptive of
20 responding to the spoken word. There is no way that
21 defendants can argue that it is or that I submit Your Honor
22 could so find. But that is what you would have to find in
23 order to invalidate this patent large on 101.

24 Claim 4 is dynamically scraping the scripted
25 interface in order to construct the query.

1 So claims 3 and 4 have analog. I don't agree
2 that claim 1 is representative of 3 and 4. Three and 4 have
3 other claims that correspond, and I would agree that 3 and 4
4 are representative of those.

5 The next slide, slide 12.

6 Six and 8 provide further meat on the bone.
7 Claim 8 is soliciting additional input is performed in
8 response to one or more deficiencies encountered during the
9 step of constructing the navigation query.

10 Your Honor, this is a specific method. It
11 requires, first, you take the information. You translate
12 it, parse it, identify the data source, construct a query.
13 Then you identify deficiencies in that query and then
14 solicit additional input using a different mode without
15 asking the user to invoke the different mode. That's a
16 specific iterative method that happens to work really well
17 that these inventors, who are the inventors of Siri, I will
18 come back to that in a moment, invented back in 1999, and
19 that defendants, we submit, are now using. There are other
20 ways to do it. We don't have to use this method. They're
21 going to argue that they don't. They're going to argue that
22 they don't infringe contrary to their general argument that
23 these claims are preemptive of the whole field.

24 I want to call your attention --

25 THE COURT: I guess you're going to argue they

1 do infringe.

2 MR. FENSTER: These particular claims, yes. I'm
3 not going to argue that there's no other way to do it or
4 that they cover all ways to do it and therefore they
5 infringe. We're going to show you with their source code
6 and specific information specific to their products why they
7 meet this limitation.

8 I wanted to call your attention to -- the next
9 slide is 13, claims 15 through 23.

10 These are claims that are aimed at very specific
11 methods of refining the query through that multimodal
12 solicitation of additional information. There are lots of
13 different ways to do it, but claims 15 through 23 provide
14 very specific detailed ways to accomplish that multimodal
15 refinement of the query, and we submit that claim 1, the
16 other claims, are not representative of these claims, that
17 these claims are representative of the corresponding claims
18 that have the corresponding limitations.

19 Claim 25 at page 14. This one is important.
20 Further including the step of selecting the data source from
21 among a plurality of candidates in response to
22 interpretation of the spoken request. Okay.

23 There are lots of systems, prior art systems,
24 that just add a front end voice driven system for accessing
25 a single electronic data source. One of the important

1 improvements of this technology was the ability to take the
2 interpretation and use it to select the appropriate data
3 source out of a plurality of data sources. Are you asking
4 about the weather or are you asking about the score of last
5 night's baseball game or was it basketball, or are you
6 asking about the train schedule? Those all require
7 searching different data sources. One of the important
8 things that this technology, that this improvement
9 accomplished was the ability to discern from the
10 interpretation what data source should I use, because that
11 drives what structure query I need to construct, what the
12 system needs to construct automatically based on the
13 interpretation before refining it with additional
14 information.

15 Claim 72 is analogous to claim 1 except that it
16 specifically requires natural language spoken request.
17 Claim 1 is spoken request. Part of, and claim 72 is
18 corresponding, but it's limited to natural language as
19 opposed to a spoken request.

20 Your Honor, I won't go through the '718. Let me
21 just point to, take you to the '061 patent. So this is
22 slide 19.

23 So, remember, your overarching inquiry is, is
24 this aimed at, directed to, does it claim all methods of
25 responding to a specific request, or is it more specific?

1 Is it claiming a specific technical solution to a technical
2 problem rooted in technology?

3 So this is utilizing agents for speech-based
4 navigation of an electronic data source. You have rendering
5 the interpretation, constructing a navigation query.
6 Everything I said about the claim 21 applies to that.

7 Routing the navigation query to at least one
8 agent. Okay. This is important because this implies an
9 architecture where you have multiple agents and you route
10 the query to one of several agents, and when you get to "E,"
11 it requires a facilitator that manages data flow among
12 multiple agents and maintains a registration of each agent's
13 capability.

14 So this is shown in Figure 6. This is the
15 facilitator. The facilitator has lots of agents that are
16 registered with it. It has to maintain a registration of
17 the agents registered with it and their capability. So when
18 the interpretation renders a request for weather, or a web
19 search or an e-mail or something else, the facilitator knows
20 how to do that.

21 Now, why is that important and how does this
22 distinguish over prior art? Because this is a distributed
23 architecture as opposed to a flat architecture. And in the
24 file history, they distinguished French, which was a flat
25 architecture. Some of the prior art that we'll hear about

1 in this case as it goes forward is prior art that had
2 serial -- it didn't route to a particular agent. It just
3 serially searches different databases until it comes up with
4 a result. This claim requires an architecture that is
5 improved over that, because it allows the routing of the
6 query to the appropriate agent, the appropriate database
7 based on the interpretation, and it does that because it's
8 able to consult its registration of the agents and their
9 capabilities in doing so, and that is a claim limitation
10 specific to the claim, that it's in the architecture, and
11 that is different than responding to a spoken request. It
12 is specific, it's a specific solution to a specific
13 technical problem.

14 THE COURT: So you used the word or phrase,
15 distributed architecture. Is the concept here that the
16 facilitator gets some kind of communication and then it has
17 all of these choices that it picks one according to some
18 rule or something?

19 MR. FENSTER: That is essentially right. So if
20 we go back to the claim, the claim has routing the
21 navigation query to an agent, invoking a user agent for
22 outputting the selected portion of the electronic data
23 source to the user, wherein a facilitator manages data flow
24 among multiple agents and maintains a registration of
25 agents' capabilities. So that is right and that is what is

1 reflected in the claim, as was shown in Figure 5 and
2 described in the specification as an improved technology.

3 And --

4 THE COURT: And so you said as opposed to a flat
5 architecture. Is that something where it just -- there's no
6 kind of intelligent choice. You just go through by brute
7 force?

8 MR. FENSTER: That's right, Your Honor. And
9 you'll hear in this case when we go through the development
10 of the technology that led to these patents, the inventors
11 of Siri went through a long development that led to these
12 patents and part of that development was figuring out how do
13 you construct the query. Part of that development was
14 figuring out this architecture that is claimed and reflected
15 in the '061 patent, because prior to this there was prior
16 art that could take a spoken request and search multiple
17 data sources, but it had no intelligence, no facilitator
18 that had a registration of the capabilities in order to
19 choose. So it would just serially search. It searches
20 database 1, do I have an answer? No. Let's go to source
21 2, source 3, et cetera, and it didn't have the feedback
22 system that is described in claim 4 of the '061 and others
23 as well.

24 But this architecture was an important point,
25 and it's part of the history of the development that led to

1 the inventions that are claimed in these patents in 1999.

2 Counsel for Sony argued that, in connection with
3 the '061, none of this was new, that all of this was old,
4 that this combination of elements was conventional.

5 First, that's not the right inquiry at the 101
6 stage.

7 Second, that is entirely lawyer argument
8 unsupported by any evidence that it's inappropriate at the
9 12(b)(6) stage where you have to find that there's no set of
10 facts under which plaintiff can prevail, under which these
11 claims could be eligible under 101. That's just not
12 sufficient to meet their burden under -- to prove these
13 patents invalid under 101.

14 What you heard is a lot of argument that each of
15 the elements in isolation were in the prior art. What you
16 didn't hear or see is any evidence that shows that the
17 combination of elements, that the combination of figuring
18 out the structured query and then a multimodal iterative
19 process to improve that query to get the information, that
20 that combination of elements that are reflected in the claim
21 was conventional. And, more importantly, they are aimed at
22 an improved technology that is specific to a -- that is
23 aimed at a problem that is specific to computer technology.
24 There is just no way around that, and that is step 1. That
25 is your analysis of step 1.

1 Your Honor, I do want to commend you to go back
2 to the Visual Memory case, the Visual Memory case, and
3 compare that to Two-Way Media. The Visual Memory case is
4 dispositive in this case and these claims are analogous, and
5 for the same reasons that the Federal Circuit found,
6 contrary to your initial determination, that the claims were
7 directed to an abstract idea in Visual Memory, these claims
8 are not aimed at, focused on, directed to, limited to the
9 abstract idea of responding to a spoken request. They're
10 just not. They are recited to and aimed at a specific
11 combination of elements that solves a problem that is
12 absolutely specifically and only rooted in technology.

13 THE COURT: So a lot of the prior cases have
14 analogies of things like libraries, and so one of the things
15 that I'm trying to think about is that a lot -- it seems
16 like some of the prior cases at least involve putting things
17 on computers and networks and that sort of thing.

18 MR. FENSTER: Yes.

19 THE COURT: And so I'm trying to figure out what
20 the difference is between one that is rooted in computer
21 technology and one that is essentially a generic problem, if
22 you will, that you can have also on a computer.

23 MR. FENSTER: Yes.

24 THE COURT: And, in any event, so part of the
25 issue, or maybe not part of the issue, but one of the things

1 then is that, to some extent, I think in some of these other
2 cases, the Court, the Federal Circuit has been influenced
3 by the fact that the description in the claims of the method
4 or the system or whatever it might be is generic, and so
5 one of the things particularly in the independent claims
6 here is it seems awful generic. And what's your response to
7 that?

8 MR. FENSTER: All right. So let me -- there are
9 two parts to that.

10 So the first is, when is the analogy to a
11 library or something else, something that you can do in the
12 human mind, when are those appropriate as opposed to when is
13 it specific to a computer technology?

14 THE COURT: Right. And in particular, and I
15 forget whether it's Bascom or Enfish, the self-referential
16 table, that had no possible analogy of something that
17 existed -- I mean, that only existed in a computer.

18 MR. FENSTER: Well, so I agree that is what
19 the -- I agree with your last statement, but I don't agree
20 that there couldn't have been other analogies, and I'm sure
21 the defendants in that case argued that this is just like a
22 library --

23 THE COURT: Maybe they did.

24 MR. FENSTER: -- card that has, that self-refers
25 to something else. So we've been doing this for years, and

1 the Federal Circuit said, no. This is specific to computer
2 technology and what it is is an improved database. Even
3 though there may be analogies in the real world, that's not
4 what the claim is about. The claims in that case were about
5 an improved technology, an improved database. In this case,
6 it's about an improved method for searching electronic data
7 source using a speech, a speech-driven system that has a
8 multimodal feedback for refining that. That is to be
9 distinguished from cases like Bilski. Okay. So this was
10 the Hedging case.

11 So a lot of the cases that I think Your Honor's
12 first question went to are claims that invoked a computer,
13 but it wasn't improving the computer itself. Right. So
14 it's doing something that people have been doing forever,
15 but doing it faster because you use a computer. Invalid.
16 Abstract. Right. But there wasn't an improvement in the
17 computer itself or in the functioning of the computer or how
18 it did that. It was just saying, use a computer to do
19 something that we've always done, and that, the Federal
20 Circuit has held, the Supreme Court has held, is abstract.
21 That is to be distinguished from DDR, Enfish, Amdocs, Visual
22 Memory, Fales. Okay. All of these cases that say, that
23 found that the problem was specific to the technology
24 itself. And here, it's not -- this isn't addressed to the
25 problem of, if you ask me a question as a person in my human

1 mind, how do I respond to that, and it's not saying just do
2 it with a computer. This is specific to the problem of, how
3 do you search a structured electronic database by asking it
4 a natural language question? Well, you need a front end
5 system to do that, and the front end system takes the
6 language, converts it to text, parses it, selects the
7 database, finds a structured query form, populates that
8 structured query form, queries the database, and then
9 refines it using other modes to do that, and it's that
10 combination that was the winning combination back in 1999
11 that was the solution to that problem.

12 So this is a difficult question, and I don't
13 know how to articulate it better than I have, and I'm sorry,
14 but what I can refer Your Honor to is compare Bilski and
15 Alice and that line of cases with Enfish. Enfish has a
16 great discussion on this. DDR was probably the first case
17 by the Federal Circuit to describe a technologically based
18 problem.

19 THE COURT: Yes. That's for sure.

20 MR. FENSTER: Visual Memory has a very good,
21 very recent discussion on exactly this problem. And I will
22 also refer Your Honor to Amdocs. That has a good discussion
23 that's relevant to our case.

24 This problem is claimed, it's described in the
25 specification as specific to electronic database. It is

1 only because it's a structured electronics data source that
2 can only be queried in a structured query. That's the
3 problem. And it's, how do you interpret a natural language,
4 spoken request to do that? That is the technological
5 problem rooted in that technology that is addressed by these
6 patents and claimed.

7 Now, to your second question, isn't this a
8 generic way to do it? They seem kind of generic.

9 Can we go back to claim 1 of the '021.

10 So, Your Honor, it is not. So there were prior
11 art systems that had natural language front ends or had
12 spoken word front ends, but they didn't have this
13 combination that allowed it to effectively do what this
14 invention does, and it's this combination of steps of
15 converting it to text, parsing it for intent, selecting the
16 data source, which gets you to a structured query.

17 Constructing the query under the construction
18 that is set forth in the specification itself is important,
19 because it's not any query. It is a structured query
20 specific to that database that selects that data source.

21 THE COURT: Well, maybe the question to ask is:
22 So how does a structured query distinguish from just a
23 query?

24 MR. FENSTER: So a structured query is defined
25 in the specification and in our proposed claim construction

1 that corresponds directly as the structured query that is
2 appropriate for that data source. Different data sources
3 have different structures.

4 THE COURT: So the structured query is really
5 the right query?

6 MR. FENSTER: No. It is the structured query
7 that is dictated by the selected data source. Okay. So if
8 it's an SQL database, it may be an SQL query and it is
9 flexible in its approach, meaning it allows for the
10 selection of different data sources and the possibility that
11 different data sources may have different structures of
12 queries necessary, different forms, templates that have to
13 be populated to use, to query that data source, and the
14 specification describes that that is something that is
15 dictated by the data source itself. But what is required is
16 to bridge the gap between the spoken language and the data
17 source is selecting the data source, recognizing that it has
18 a specific type of structure that you need to use,
19 populating that, and then it provides a mechanism to
20 recognize deficiencies in that query and how to resolve
21 that, and it provides very specific methods using multimodal
22 technologies and those methods described in claims 15 to 23
23 of the '021 patent to resolve those ambiguities.

24 It's a specific way to do it. It may be broad,
25 but it is not preemptive, and if it is so broad as

1 defendants say, then they'll have lots of prior art and be
2 able to prove that it's invalid under 102 or 103. But 101
3 is not a proxy for that analysis. These cases should go
4 forward. They have not met their burden under step 1 or
5 step 2 of the 101 analysis.

6 THE COURT: All right. Thank you, Mr. Fenster.

7 MR. FENSTER: Thank you, Your Honor.

8 THE COURT: All right. Not too much, but I
9 assume there's probably a desire to reply to some of this?

10 MR. HADDEN: If I could, Your Honor?

11 THE COURT: Sure.

12 MR. HADDEN: So I'm pulling up this slide. Let
13 me respond briefly to Your Honor's question and a sort of
14 general description of the 101 law, because I think there
15 are actually sort of two paths to 101. There's clearly
16 the Bilski line of cases, Amazon OIP, where the issue is
17 just, are you taking a standard brick and mortar business
18 practice and putting go it online. Those cases are clearly
19 invalid.

20 THE COURT: Yes. We're not talking business
21 practice here.

22 MR. HADDEN: We're not talking that. There's
23 another line of cases though, and it goes back to our first
24 quote. Two-Way Media, which is, there are also cases that
25 are abstract because they're claiming a result and not a

1 specific solution. That's Affinity Labs, Two-Way Media,
2 TLI, all of those cases.

3 Now, there is not a get out free card from 101
4 because your claims are about digital information or
5 computers. Right. Two-Way Media was about a network,
6 multicasting, streaming system. It was rooted in computer
7 technology. But the Federal Circuit found it was invalid
8 because it wasn't claiming a specific solution. It was
9 claiming a result. The same thing in Affinity Labs. Right.
10 It was about streaming digital information to a handheld
11 device. That is rooted in computer technology. It's still
12 invalid because it didn't claim a specific way to do it. It
13 claimed a result.

14 THE COURT: So claiming a result of a 101
15 problem, when you claim a result, what does the Court say
16 you should say of the abstract idea?

17 MR. FENSTER: The abstract idea is the result.
18 Right. Here it is responding to a spoken request. All
19 right. In TLI, it was providing information to a portable
20 device. Not TLI. Sorry, Your Honor. Affinity Labs. TLI,
21 I forgot the exact articulation, but it was basically the
22 ability to upload and categorize digital images on a server.
23 Right.

24 All of those things are rooted in technology and
25 computers, but they're not providing an improvement to

1 computer technology. They're just claiming a result that is
2 obtained using computers or networks or other things, and
3 that's what's happening here.

4 The other kind of issue that we heard for the
5 first time really, which was not in their brief, was what
6 was that the specific technical solution here is taking a
7 query that is formulated in a natural language and
8 converting it to a structured query. But there is nothing
9 in this claim that provides a solution for doing that.

10 So if we look at the slide we have up, as Your
11 Honor pointed out, right, a navigation query under their
12 construction is a query that works. There's nothing that
13 tells you how to construct that query that will work.
14 There's nothing in this claim that tells you how to select
15 the appropriate database for which you will then construct
16 the appropriate query. It just said creating, using.
17 Right. Saying, do the right thing to get the information
18 the user wants with no method or algorithm or steps or
19 solution for figuring out how that is and how to do it.

20 And we go back to the Clint Eastwood example and
21 Your Honor's video store. There's no distinction. Right.
22 The same steps in this claim could be performed with the
23 clerk at the video store, and there's no more detail in this
24 claim as to how a computer can solve the problems that are
25 required. For example, identifying what the specific

1 database is, identifying what the format of a structured
2 query would need to look like for that database. Somehow
3 creating that structured query from the meaning of the words
4 that were obtained from the user. None of that is described
5 in this claim.

6 In addition, soliciting the additional input,
7 there's no description on how the system determines
8 additional input is needed, how that additional input could
9 be used in this structured query that has to be created, or
10 anything else. Right. All this claim does is our Clint
11 Eastwood walk through. Right. I want this. Here are some
12 options. Pick one. You get what you want. That's why this
13 claim is abstract. It claims nothing but the idea for that
14 interaction. It leaves it to someone else to figure out all
15 the hard stuff, like, what is the right structured query,
16 what is the right database, how would you find it, how would
17 you do this magic conversion from natural language to a
18 structured query? It's just not there.

19 THE COURT: So the claim, one of these dependent
20 claims Mr. Fenster showed, it talks about --

21 MR. HADDEN: Creating a template or something?

22 THE COURT: Yes.

23 MR. HADDEN: First off, Your Honor, none of that
24 was raised in their brief.

25 THE COURT: Well, yes, I didn't see it in the

1 brief either, but that's part of the reason why we have
2 argument, to flesh out or you talk about a smoke out. You
3 know, what everybody's positions are. I'm sure you have a
4 response.

5 To the extent the -- I was just going to say, it
6 may be that if the briefing is all about claim 1, maybe
7 we'll address claim 1, but if it goes badly for the
8 plaintiff, then we'll have another round where we address
9 claim 3 and 4. I mean --

10 MR. HADDEN: We can do that. Those claims
11 weren't asserted. They were never raised in the brief. I
12 can respond off the cuff, but I'm not sure it's going to be
13 complete.

14 But to follow up what's on the screen, it says,
15 basically, you find some template that works and you adapt
16 it based on the natural, the meaning of what was said. That
17 again is not solution. It doesn't tell you how to find the
18 template. It doesn't tell you what the template is. It
19 doesn't tell you how you go from the meaning of the words
20 that were spoken to some structure that would be appropriate
21 for a particular database. It adds maybe a little gloss,
22 but it says nothing about how you would actually do this and
23 whether it would be a solution.

24 But if they're going to hang their hat on claim
25 3 or 4, we're happy to address it, but those aren't asserted

1 and have nothing to do with the case.

2 THE COURT: You say they aren't asserted, but I
3 thought I heard Mr. Fenster say they had the claims to
4 assert it.

5 MR. HADDEN: They identified claims in their
6 complaint.

7 THE COURT: Oh.

8 MR. HADDEN: And we addressed those claims.

9 THE COURT: Okay. But that does not really
10 limit them.

11 MR. HADDEN: Understood, Your Honor. I saw no
12 there, there. If you would like me to address it's in more
13 detail, I'm happy to do it.

14 THE COURT: All right. It wouldn't be the first
15 thing that we're going to do here.

16 Okay. Do you have anything else, Mr. Hadden?

17 MR. HADDEN: Unless Your Honor has questions, I
18 will give my colleague a shot.

19 THE COURT: No. I will give your colleague a
20 shot, too.

21 MR. HENDERSHOT: I appreciate it, Your Honor.

22 Bring up slide 12.

23 So with respect to the structured query that
24 they talked about, they talked about using conventional
25 technology, conventional technology. They talk about,

1 really, it's about the structured query.

2 These are their constructions of a navigation
3 query. And if you look at the specification, the second
4 quote, it says, practitioners of ordinary skill in the art
5 will be thoroughly familiar with the notion of database
6 navigation through structured query. So they're familiar
7 with that, which I believe he conceded, but not just the
8 idea that you can do it.

9 It continues and says, those practitioners will
10 be readily able to appreciate and utilize the existing data
11 structures and navigational mechanisms for a given database,
12 and this is the key point, the last bit. Or to create such
13 structures and mechanisms where desired.

14 So it is fully within those of skill in the art
15 to create the structured query. I'm not arguing 102 or 103
16 right now. This is the specification, which is properly in
17 the record under a Rule 12 motion, copying what he just said
18 the invention as conventional. That's their own
19 specification. That's not attorney argument. That's not me
20 trying to characterize some things. That is their
21 specification. And they said what he said the invention is
22 was conventional and something of a person of ordinary skill
23 in the art was readily able to implement.

24 With respect to claims 3 and 4 and scraping a
25 template, again, those were not in the brief, but I would

1 point the Court's attention to in the '061 patent, column 9.
2 I will begin reading from line 36. It says, in many
3 existing Internet and Intranet applications, an online data
4 source is accessible to users only through the medium of an
5 interaction with so-called common gateway interface script,
6 or a CGI script, which is what he was talking about
7 scraping. That was ubiquitous technology in the Internet
8 then and now.

9 The patent continues to discuss this CGI script,
10 which was ubiquitous and acknowledged in the patent as
11 standard.

12 In column 10, beginning at line 6, in the
13 embodiment just described, scraping step, which is scraping
14 that template, is preferably carried out with the assistance
15 of an online extraction utility, such as WebL. That's
16 capital W-e-b-L.

17 And it says WebL is a scripting language and
18 continues on, describing its capabilities, and the complete
19 source code for WebL is available from Compaq. This is
20 off-the-shelf software that they are talking about using.
21 It was ubiquitous at the time. The specification or the
22 points he's talking about in these claims at a minimum are
23 talking about using purely conventional and off-the-shelf
24 software. That's not me arguing that. That's the language
25 of the specification.

1 There was some discussion of 101 not being a
2 proxy for 102 or 112. I agree. I'm not arguing 102 or 13.
3 I think they will have 112 problems down the pike if we get
4 there. But we focused on the claims and admissions in the
5 specification demonstrating they are conventional.

6 The addition of computing technology that is
7 conventional, as admitted in the specification, doesn't
8 transmit a claim in Alice step 2. That's why we focused on
9 that. I'm not arguing 102 or 103 here, but counsel laid out
10 file histories and argued 102 and 103 in connection with the
11 file histories to argue that these claims aren't preemptive
12 because they distinguished over prior art.

13 When these patents were prosecuted, State Street
14 Bank was the law of the land. You could patent anything
15 under the sun made by man. So it was years before Bilski,
16 years before Alice.

17 THE COURT: I didn't think he was doing that to
18 say there had already been some kind of ruling on 101.

19 MR. HENDERSHOT: Yes. I would say the law is
20 developed since then and the fact that they overcame a 102
21 or 103 objection I don't think is relevant to 101.

22 In Two-Way Media, Federal Circuit recently
23 stated --

24 THE COURT: I know what they said.

25 MR. HENDERSHOT: All right. And they also said

1 complete preemption is not required, I'm sure Your Honor is
2 familiar with, and the Cramps analysis, Alice Step 1 and
3 Step 2, which we've addressed.

4 And just to circle back briefly, these claims
5 involve computers. There's no question they recite
6 conventional generic computing technology. But Your Honor
7 is talking about a brick and mortar example of a library,
8 and we laid out a couple of those examples in our briefing.

9 THE COURT: Yes. I can't remember. I read so
10 many of these briefs, there are so many analogies, and
11 people like to use the same analogies, so I get them all
12 confused.

13 MR. HENDERSHOT: I did a law firm's files
14 because it's near and dear to my heart, but I can go with
15 the library you talked about.

16 If I go to a librarian and I want to find a
17 Law Review article from, say, Judge Learned Hand wrote one.
18 I can't name one off the top of my head. I apologize. I
19 will ask for help in the library because I'm not going to be
20 able to find that myself, make an oral request. Hey, I'm
21 looking for a Law Review article by Judge Hand. The
22 librarian is going to render an interpretation of that. If
23 that's not enough information, she's going to ask me for
24 more. Maybe there's a form that I need to fill out. Maybe
25 multiple forms. Maybe one for microfiche. Maybe one for

1 just getting a book off the shelves, a research request.

2 Those are structured queries at the level they're talking
3 about.

4 And all of the claims, all of the elements in
5 these claims map to that kind of example. If I have to do a
6 non-spoken modality and fill out, this is the title of the
7 article, or this is where I think it was published, that is
8 an interaction that maps to these claims. And I say that
9 not because this is a business method that was done off the
10 Internet that they're trying to put on the Internet. I'm
11 not invoking that line of cases, but what it's illustrative
12 of is that they are claiming these desired results at such a
13 high functional level that's fundamental to processing the
14 spoken request, they still map to brick and mortar examples
15 as we laid out in our briefing.

16 So it is the fact these claims are claiming
17 things in results oriented language, desired functions they
18 want to achieve, I don't have a specific way of getting them
19 done. That's why I'm asking for a brick and mortar example,
20 and those, each of those steps in those functions are
21 fundamental to the abstract idea identified in the briefing,
22 which was responding to a spoken request for information.
23 We've laid that out in our briefing. I won't burden you
24 with more argument now on it. That covers what I have.

25 THE COURT: All right. Mr. Fenster, I detect

1 that you would like to respond.

2 MR. FENSTER: Your Honor, I will keep it very
3 brief. Two-Way Media and Visual Memory. I commend you to
4 read these two decisions.

5 THE COURT: Right. You said that at least once
6 already.

7 MR. FENSTER: So in response to what Mr. Hadden
8 just said. So the difference is in Visual Memory, there was
9 an improved technology, and in Two-Way Media, there was no
10 improvement in technology. It did involve streaming, but it
11 didn't involve any technology, an improvement in technology,
12 and that was the difference between Two-Way Media and Visual
13 Memory.

14 Here, there is an improved technology, and that
15 is the ordered combination. This combination of elements is
16 not old or conventional, and neither of the defendants can
17 point to anything in the specification that says, this
18 ordered combination is old. It's conventional. Instead,
19 they point to individual elements in isolation. That goes
20 to enablement, not to the overall concept and whether these
21 were put together in an unconventional way, and if they were
22 so conventional, then they will have 102 art for Your Honor,
23 and they don't.

24 THE COURT: The argument I think Mr. Hadden
25 made, I'm not sure I actually heard made quite the same way

1 before, which I think I should fairly summarize as being,
2 patents are abstract when they just claim the results. What
3 about that?

4 MR. FENSTER: These don't claim the result.
5 They claim a series of steps to get there, and that
6 argument, that very argument is specifically addressed at
7 pages 12 to 15 of the Visual Memory case. And, Your Honor,
8 they go through and say that analysis is wrong at the 101
9 level. It goes to enablement. Read pages 12 to 15 of the
10 Visual Memory case in light of Mr. Hadden's argument. It
11 addresses exactly that.

12 THE COURT: Okay. Thank you.

13 MR. FENSTER: Thank you, Your Honor.

14 THE COURT: All right. I will take this under
15 advisement and in due course will issue some opinion.

16 And is there anything further that I can help
17 you with today?

18 MR. FENSTER: No, Your Honor.

19 MR. HADDEN: No, Your Honor.

20 MR. HENDERSHOT: No, Your Honor.

21 THE COURT: All right. Well, thank you very
22 much for your time. We'll be in recess.

23 (Hearing concluded at 5:00 p.m.)

24 - - -
25